

To: "Hyatt, Jr., William" [william.hyatt@klgates.com]
Cc: "Mack, Karyllan Dodson" [Karyllan.Mack@klgates.com]; Monsen, Dawn M." [dawn.monsen@klgates.com]
Bcc: CN=Patricia Hick/OU=R2/O=USEPA/C=US@EPA[]
From: CN=Sarah Flanagan/OU=R2/O=USEPA/C=US
Sent: Fri 6/15/2012 2:30:31 AM
Subject: Re: RM 10.9 Signature Pages
[<Karyllan.Mack@klgates.com>](mailto:Karyllan.Mack@klgates.com)
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Bill,

Today was very hectic, and I never had a chance to follow up with you about your statements in the cover letter with the signature pages concerning whether Occidental Chemical Corporation, Maxus Corporation, or Tierra Solutions, Inc. are or could be added as signatories to the Administrative Settlement Agreement and Order on Consent ("AOC"), so I am going to take a quiet moment now to do so.

First, for the avoidance of doubt (as the bankruptcy lawyers like to say) given the Integration Clause in Paragraph 91, by which all parties to the AOC acknowledge that there are no representations, agreements or understandings other than those set forth in the AOC, I take your statements about the assumptions made by the Settling Parties as they submit their signature pages as an expression of their hopes and expectations as they work with EPA to implement the removal action, and not a suggestion that the signature pages are conditioned on representations, agreements or understandings outside of the AOC.

Second, the AOC speaks for itself on the Settling Parties' expressed assumption that Occidental, Maxus and Tierra are not, and will not become, signatories to the AOC without the consent of the Settling Parties. Occidental, Maxus and Tierra are not signatories to the AOC; and, given that the Settling Parties will be working as a group under the Settlement Agreement to fund and implement the requirements, whereas Occidental, Maxus and Tierra have not participated in the allocation of the costs of the removal work, I am not sure how this would be possible or workable.

Third, as for EPA's future course with respect to Occidental, Maxus and Tierra, as I am sure the Settling Parties know EPA will not bind itself to take, or decline to take, a particular action in an area that lies within EPA's enforcement discretion. However, we have discussed what EPA's expectations are in regard to CPG members that did not enter into the AOC, and I refer you to my letter dated May 21, 2012 on that point.

Finally, we appreciate the difficult work that the Settling Parties have engaged in over the last few weeks and months, and will certainly be looking forward to working constructively with the group as we move forward. Please let me know if you would like to discuss further any of the above. I will be in all day Friday.

Regards,

Sarah

Sarah P. Flanagan

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-----"Mack, Karyllan Dodson" <Karyllan.Mack@klgates.com> wrote: -----
To: Sarah Flanagan/R2/USEPA/US@EPA
From: "Mack, Karyllan Dodson" <Karyllan.Mack@klgates.com>
Date: 06/14/2012 11:48AM
Cc: "Hyatt, Jr., William" <william.hyatt@klgates.com>, "Monsen, Dawn M." <dawn.monsen@klgates.com>
Subject: RM 10.9 Signature Pages

Sarah,

Please see the attached. I'm told that the messenger should arrive at EPA by 12:30 p.m.

Karyllan

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[attachment "NW-#407434-v1-lprsa_-
_06_14_12_letter_to_sarah_flanagan_enclosing_signature_pages_to_aoc.PDF" removed by Sarah

Flanagan/R2/USEPA/US]